REMARKS

Claims 1, 5–14, and 17 are pending. Claims 2–4 are currently cancelled. Claim 1 is currently amended. Reconsideration of the application is requested.

§ 112 Rejections

Claims 1–14 and 17 were rejected under 35 USC § 112, first and second paragraph. Claims 2–4 are currently cancelled. With the amendment to claim 1, the rejections under 35 USC §112 are overcome.

§ 103 Rejections

Claims 1–14 and 17 are rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent 6,054,488 (Oliver) in view of U.S. Patent 6,129,905 (Cutie), WO 01/78740 (Gavin), and U.S. Patent 6,131,566 (Ashurst).

Cutie, teaches the provision of sugars in MDI formulations as dispersants (not bulking agents), having a particle size of less than 10 microns, less than 5 microns, or less than 2 microns. See Column 3, lines 29 to 33. Cutie also teaches that such a sugar component is useful for certain drugs or drug combinations. See column 4, lines 25 to 40. Importantly, however, Cutie conspicuously fails to mention either formoterol fumarate dihydrate or mometasone furoate, alone or in combination, as drugs "which may be administered via the inventive formulations.

Cutie states that the list is intended to illustrate preferred embodiments and is not meant to limit the scope of the claims. This is, of course, self-serving language that does not, by any stretch, actually enable any specific combination of drugs, particularly when neither of those drugs is even mentioned in Cutie.

No combination of Cutie with Oliver, Aherst, or Gavin could lead one of ordinary skill in the art to a reasonable expectation of success in applying the dispersant in Cutie as a bulking agent, selecting a size for the bulking agent of under one micron, and selecting a two drug combination for which Cutie does not indicate technical compatibility even with its materials as a dispersant, let alone as a bulking agent.

The rejection of claim 1 under 35 USC § 103(a) as being unpatentable over Oliver in view of Cutie, Aherst and Gavin has been overcome and should be withdrawn.

Claims 5–14 and 17 each add additional features to claim 1. Claim 1 is patentable for the reasons given above. Thus, claims 5–14 and 17 are likewise patentable.

In summary, the rejection of claims 1, 5–14 and 17 under 35 USC § 103(a) as being unpatentable over Oliver in view of Cutie, Aherst and Gavin has been overcome and should be withdrawn.

In view of the above, it is submitted that the application is in condition for allowance. Examination and reconsideration of the application as amended is requested.

Respectfully submitted,

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